



May 2, 2000

Ms. Tracy B. Calabrese  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2000-1703

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136047.

The City of Houston received a request for copies of two internal investigations. You seek to withhold the requested information under section 552.101 of the Government Code.

Section 552.101 requires withholding information made confidential by statute. Section 143.089(g) of the Local Government Code provides in part:

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.

Similarly, section 143.1214(b) of the Local Government Code, which specifically applies to municipalities with a population of 1.5 million or more, provides that information relating to charges of misconduct which were not sustained is to be maintained by the department and not to be released except to another law enforcement agency or fire department.

We understand you to advise that the investigations in question were concluded by determining that the underlying complaints or charges were unfounded and that the requested information is maintained only in the file provided for in subsection (g) of section 143.089. Based on your representations, and having examined the records at issue, we conclude that you must withhold the requested records under section 552.101 of the Government Code in conjunction with sections 143.089(g) and 143.1214(b) of the Local

Government Code. *See also* Local Government Code § 143.089(a) (civil service director or designee to maintain personnel file on each fire fighter and police officer containing, *inter alia*, records relating to misconduct for which disciplinary action taken under chapter 143); § 143.089(b) (records relating to charges of misconduct not to be placed in subsection (a) file if charges determined to be unfounded).<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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<sup>1</sup>We note that the requestor, who was the complainant in the investigations here, contends that he has a right of access to the requested information under section 552.023 of the Government Code. That provision prohibits denying access to information to a person based solely on laws intended to protect that person's privacy interests. In our opinion, the controlling provisions are not laws designed to protect only the privacy interests of a complainant in an investigation. Therefore, section 552.023 does not afford him access to the requested materials.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Walker', with a long horizontal flourish extending to the right.

William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 136047

Encl. Submitted documents

cc: Mr. J. Earl Hall  
2710 Pecan Court  
Missouri City, Texas 77459  
(w/o enclosures)